UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

Shauna K. Paul, Plaintiff, vs. Standard Insurance Company, Defendant.	**Case No.: ____________** **PLAINTIFF'S COMPLAINT**

Plaintiff, through her undersigned attorneys, states and alleges as follows:

JURISDICTION AND VENUE

1) This Complaint arises under the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1001 *et seq*. ("ERISA"), and the principles of federal common law developed thereunder.

2) This Court has jurisdiction pursuant to the jurisdictional provision of ERISA, 29 U.S.C. §1132(e)(1), and federal question jurisdiction under 28 U.S.C. §1331.

3) Venue is proper in this district pursuant to 29 U.S.C. §1132(e)(2) because this is the district where the breaches described herein occurred and this is the district where the defendants may be found.

PARTIES

4) From June 2008 until October 15, 2015, Plaintiff Shauna K. Paul was employed by Segetis, Inc. ("Segetis") which was located in Golden Valley, MN.

5) Segetis was a start-up in the business of converting bio-mass into an ingredient used in chemicals and plastics.

6) Because of this employment, Plaintiff was a participant in various employee welfare benefit plans including: Short-Term Disability ("STD"), Long-Term Disability ("LTD"), and life insurance plans all sponsored by Segetis.

7) Segetis funded these benefit plans through the purchase of insurance from Defendant Standard Insurance Company ("Standard").

8) Standard is an insurance company selling group STD, LTD and life insurance policies in Minnesota and having its principal place of doing business in Portland, OR.

9) Standard issued group policies to Segetis under policy numbers: 145574-A (Life), 145574-B (STD), and 145574-C (LTD). All three policies were issued in the State of Minnesota.

RELEVANT FACTS

Plaintiff's Accident and Injuries

10) On Sunday, April 19, 2015, Plaintiff was driving her GMC Yukon to the barn where she stabled her horse.

11) As her vehicle crossed the intersection of Bass Lake Road and County Road 101 in Maple Grove, MN, another vehicle slammed into the driver's side of Plaintiff's vehicle, T-boning it. Both vehicles were moving at about 45-50 miles per hour at the time.

12) The impact was so powerful that the 3rd row seat of Plaintiff's Yukon was ejected through the back window.

13) Plaintiff was hurt in her neck and back and reported this to the first responders. She was told that she was going to be quite sore and that if she got worse to go to urgent care. Plaintiff left the accident scene assisted by a friend.

14) As the day went on, Plaintiff was having increasing pain in her neck and back and she developed headache and jaw pain. She went to the urgent care and was then referred to the ER at Maple Grove Hospital.

15) Following x-rays, Plaintiff was diagnosed with a probable fractured T-12 vertebra as well as strain injuries to her cervical, thoracic and lumbar spines. The ER doctor offered to admit Plaintiff to the hospital for pain management but Plaintiff chose to go home with pain prescriptions and instructions for rest. She was told to return if symptoms worsened.

16) Plaintiff stayed home the following day resting.

17) The day after, Tuesday, April 21, 2015, Plaintiff went to a previously scheduled appointment with her mental health provider. Plaintiff was very confused and disoriented and her counselor suspected Plaintiff was suffering from a concussion. The counselor told Plaintiff to immediately seek further evaluation.

18) Plaintiff returned to the ER at Maple Grove Hospital that day and was evaluated and diagnosed with a concussion. She was told she must have a brain rest and be evaluated by a concussion specialist.

19) The next day, April 22, 2015, Plaintiff consulted Dr. Maria Ryan, a primary care sports medicine specialist recommended by the ER doctor.

20) The sub-specialty of primary care sports medicine involves the non-surgical treatment of injuries, functional deficits or pain related to the use of bone, muscle, nerve, tendon or ligaments as well as the assessment and treatment of concussion.

21) Dr. Ryan diagnosed Plaintiff with a concussion noting that Plaintiff was experiencing many classic symptoms of concussion including: headaches, visual disturbance, speech difficulty, light sensitivity, balance problems, and difficulty with concentration/cognition.

22) Additionally, Dr. Ryan diagnosed a T-12 vertebral fracture and muscle spasm throughout Plaintiff's spine.

23) Dr. Ryan initiated a course of treatment to address the concussion and neck and back pain that included: medication management, physical therapy, vision therapy, massage therapy, speech therapy, and continued mental health care.

24) Additionally, Dr. Ryan restricted Plaintiff to 20 hours of work a week with very limited use of the computer to promote brain rest for the concussion.

25) Segetis accommodated these restrictions and, although Plaintiff was unable to work full time, continued to pay Plaintiff her regular salary.

26) Plaintiff followed the instructions from Dr. Ryan and participated in all therapies and treatments.

27) By August of 2015, however, Plaintiff's concussion symptom of cognitive slowing was not improving. Dr. Ryan referred Plaintiff to a neuropsychologist, Dr. Jackie Micklewright, who performed neuropsychological testing which showed Plaintiff had weaknesses in the areas of sustained attention, cognitive speed and processing accuracy.

28) Likewise by August of 2015, Plaintiff's pain symptoms in her neck and back were not getting better. Dr. Ryan ordered MRI scans of Plaintiff's thoracic and lumbar spine. The MRI's revealed the fracture at T-12 of the thoracic spine as well as significant abnormalities at multiple levels of the lumbar spine.

29) Dr. Ryan referred Plaintiff to Dr. Glenn Buttermann, an orthopedic surgeon with extensive experience in surgical treatment of the spine. Dr. Buttermann performed a full examination of Plaintiff and also ordered MRI scanning of the cervical spine.

30) Based on the MRI studies of all 3 areas of the spine and his examinations, Dr. Buttermann diagnosed the following: (1) a compression fracture at T-12; (2) disc space narrowing, dehydration and diffuse disc bulging and mild bilateral lateral recess stenosis at L4-5; (3) degenerative spondylolisthesis and bilateral foraminal stenosis at L5-S1; (4) a small disc herniation with advanced bilateral foraminal stenosis at C5-6; and (5) a large left disc herniation with secondary foraminal stenosis at C6-7.

31) Dr. Buttermann prescribed conservative care for the thoracic spine and nerve block injections for the cervical and lumbar spine.

32) Although since the accident Plaintiff had scrupulously adhered to all treatment recommendations by her medical providers, by the end of September of 2015, Plaintiff's symptoms from the concussion and the spine injuries were so overwhelming that Dr. Ryan determined Plaintiff required a total disability leave and accordingly Plaintiff stopped working on or about September 28, 2015.

33) Due to unresolvable financial difficulties, on October 15, 2015 Segetis ceased all operations and terminated its employees (including Plaintiff). At the same time, all insurance policies for Segetis's employees ended.

34) While out on disability leave Plaintiff continued with all recommended therapies from Dr. Ryan and underwent the cervical and lumbar spine nerve block procedures prescribed by Dr. Buttermann.

35) Unfortunately, these procedures were unhelpful and Dr. Buttermann determined Plaintiff required surgery.

36) On November 18, 2015, Plaintiff underwent an anterior cervical discectomy and fusion at C5-6 with decompression and total disc replacement with decompression at C6-7.

37) Plaintiff experienced a difficult and prolonged recovery from the cervical spine surgery that included a lengthy period wearing a neck brace, physical therapy, a long period of time wearing an external bone growth stimulator to

address non-healing bone tissue, substantial physical restrictions—including work restrictions--and pain medications.

38) On May 24, 2016, Dr. Buttermann performed an anterior and posterior spinal fusion and decompression at L5-S1. The surgery was complicated by the fact that during the surgery the doctor found a fractured facet joint at L-5 that required surgical fixation.

39) Plaintiff's recuperation from the lumbar surgery has been prolonged and complicated as well. She has required the use of a walker, physical restrictions, pain medications, and no work activity. Her lumbar spine recovery has been complicated by problems with pitting edema, pain control, osteopenia, and the sub-optimal placement of the screw on the right side of her vertebrae at L5-S1.

40) Plaintiff continues to recuperate from both surgeries but the process has been very difficult.

41) Dr. Buttermann eventually determined that Plaintiff required further surgical interventions in both the lumbar and cervical spine.

42) Plaintiff is scheduled for a lumbar surgery on April 27, 2017 and for a further cervical surgery as soon as possible thereafter.

43) Plaintiff's recovery from her concussion has also been prolonged as she has had to suspend or reduce therapies for the concussion issues while recovering from her neck and low back surgeries.

44) Because of her disabling concussion symptoms and spine injuries, Plaintiff has been unable to work in any capacity since September 28, 2015.

Application for STD Benefits

45) On or about September 30, 2015, Plaintiff submitted a claim to Standard for STD benefits.

46) By letter dated October 8, 2015, Standard approved Plaintiff's claim for STD benefits.

47) By letter dated November 19, 2015, Standard approved Plaintiff's continuing entitlement to STD benefits through December 27, 2015 which was the 90th day of STD benefits and represented the full amount of benefits available under the STD policy.

48) The definition of disability in Standard's STD policy is:

> You are required to be Disabled only from your Own Occupation. You are Disabled from your Own Occupation if, as a result of Physical Disease, Injury, Pregnancy or Mental Disorder:
>
> 1. You are unable to perform with reasonable continuity the Material Duties of your Own Occupation; and
>
> 2. You suffer a loss of at least 20% in your PreDisability Earnings when working in your Own Occupation.

Application for LTD and LWOP Benefits

49) By letter dated November 30, 3015, Standard advised Plaintiff it had begun processing her claims for LTD benefits and life waiver of premium for disability ("LWOP") benefits under her life policy.

50) LWOP is a benefit within the life policy which provides an employee with continuing life insurance coverage, without the payment of premiums, during disability.

51) By letter dated February 17, 2016, Standard denied Plaintiff's claim for LTD benefits asserting: (1) Plaintiff was not disabled throughout the LTD policy's elimination period of September 28, 2015 through December 27, 2015; and (2) Plaintiff lost coverage when Segetis ceased operations and Plaintiff did not prove she was totally disabled between that date and the date of her cervical spine surgery (November 18, 2015).

52) The LTD denial letter advised Plaintiff that she had the right to appeal within 180-days of her receipt of the denial letter.

53) The LTD denial letter did not address Plaintiff's entitlement to LWOP benefits but a subsequent email to Plaintiff dated April 21, 2016 stated that since she did not satisfy the definition of disability in the LTD policy, Plaintiff was not disabled within the meaning of the LWOP provision in the life policy.

54) The definition of disability in the Standard LTD policy relevant to Plaintiff's claim is:

> You are required to be Disabled only from your Own Occupation. You are Disabled from your Own Occupation if, as a result of Physical Disease, Injury, Pregnancy or Mental Disorder:
>
> 1. You are unable to perform with reasonable continuity the Material Duties of your Own Occupation; and
>
> 2. You suffer a loss of at least 20% in your Predisability Earnings when working in your Own Occupation.

55) The definition of disability in the LWOP provision of the life policy is:

> Totally Disabled means that, as a result of Sickness, accidental Injury, or Pregnancy, you are unable to perform with reasonable continuity the material duties of any gainful occupation for which you are reasonably fitted by education, training and experience.

Appeal from Denial of LTD and LWOP Benefits

56) Following the rejection of her LTD and LWOP claims, Plaintiff retained counsel and counsel requested extensions of the deadline for submitting Plaintiff's appeal which Standard granted.

57) Through her attorney, Plaintiff submitted an appeal to Standard on October 6, 2016.

58) Plaintiff's appeal included: (1) a 24-page appeal cover letter; (2) a 17-page statement of Plaintiff with 10 exhibits; (3) a 13-page statement of Dr. Ryan with 22 exhibits; (4) a 5-page statement of Dr. Buttermann with 1 exhibit; (5) a statement from Plaintiff's boss at Segetis; and (6) statements from two of Plaintiff's friends.

59) By letter dated January 7, 2017, Standard denied Plaintiff's claims for LTD and LWOP benefits. Standard opined that : (1) Plaintiff had not established she was totally disabled as of late September of 2015; and (2) although Plaintiff was disabled as of November 18, 2015 (the date of her cervical spine surgery), she had not shown she was totally disabled as of October 15, 2015 when coverage ended.

CLAIM FOR BENEFITS DUE UNDER ERISA BENEFIT PLANS PURSUANT TO 29 U.S.C. §1132(a)(1)(B)

60) Plaintiff incorporates all preceding paragraphs and further alleges as follows.

61) Plaintiff was a participant in group STD, LTD and life employee welfare benefit plans sponsored by her employer, Segetis, all of which were subject to the Employee Retirement Income Security Act of 1974 ("ERISA").

62) All three plans were insured by Standard under separate policies.

63) Plaintiff was eligible for and properly enrolled in all three policies.

64) Plaintiff was involved in a motor vehicle accident on April 19, 2015 that caused her severe and disabling injuries including a concussion and injuries to her cervical, thoracic, and lumbar spine.

65) The injuries Plaintiff sustained became totally disabling within the meaning of the STD, LTD and life policies on or about September 28, 2015 and Plaintiff has continued to be totally disabled within the meaning of those policies up to the present and continuing.

66) Plaintiff made timely applications to Standard for payment of benefits under all three policies.

67) Standard paid Plaintiff the full extent of STD benefits representing total disability from September 28, 2015 through December 27, 2015.

68) Standard denied Plaintiff's claims for LTD and LWOP benefits on the basis that Plaintiff had not shown she was totally disabled from September 28, 2015 through December 27, 2015 and because Plaintiff had not shown she was totally disabled from October 15, 2015 through November 18, 2015.

69) In making the determinations described in paragraph 68, Standard did not explain how those determinations could be reconciled with its determination that Plaintiff was totally disabled during the same time for purposes of the STD policy.

70) Plaintiff properly appealed from the denial of LTD and LWOP benefits and has fully exhausted her administrative remedies.

71) Under 29 U.S.C. §1132(a)(1)(B), a participant may bring a civil action: "*to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan.*"

72) Standard's denial of Plaintiff's claims for LTD and LWOP benefits is a wrongful denial of benefits due under 29 U.S.C. §1132(a)(1)(B).

WHEREFORE, Plaintiff requests judgment against Standard and an ORDER of this Court as follows:

73) Reinstate her into the LTD policy and pay her all past due LTD benefits plus interest;

74) Commence the payment of monthly LTD benefits going forward according to the terms of the LTD policy;

75) Reinstate her into the life policy retroactive to her date of disability with waiver of all past premiums;

76) Continue life insurance coverage, with waiver of premiums, going forward according to the terms of the life policy;

77) Reimburse Plaintiff's costs, disbursements, and other expenses of this litigation, including reasonable attorneys' fees and experts' fees, pursuant to 29 U.S.C. §1132(g); and

78) Provide such other and further relief as the Court deems just and proper.

Dated: March 30, 2017

Respectfully submitted:
By: s/ Katherine L. MacKinnon

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